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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,768	02/09/2004	Gregory Ashton	9490	9760

27752 7590 05/01/2006

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EXAMINER
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HILL, LAURA C

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/774,768	ASHTON ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Laura C. Hill	3761

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS,  
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 March 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,5,6 and 21-33 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5,6 and 21-33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 October 2005 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1 March 2006 has been entered.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-6 and 21 to Kling (US 6,213,991), claims 1 and 4 to Nomura et al. (US 5,163,932), claim 21 over Kling in view of Olson (US 2002/0099353), and claim 22 under Kling in view of Dragoo et al. (US 6,229,061) have been considered but are moot in view of the new ground(s) of rejection.

### ***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Absorbent Article with Flap Joined to Outer Surface and Gap for Finger-Gripping.

### ***Claim Language Interpretation***

3. The term 'stratum' as recited in claims 1 and 33 is given the broadest reasonable interpretation consistent with the specification of 'lamina or a laminate' (see specification page 13, line 10).

4. The term 'welding' and 'welding means' as recited in claims 1, 30 and 33 is interpreted to include sonic sealing, heat sealing, pressure bonding, adhesive such as hook and loop, sewing, autogeneous bonding, and the like (see instant Specification page 6, lines 18-25).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5-6, and 23-30 are rejected under 35 U.S.C. 102(b) as being anticipated by LaVon et al. (US 2002/0091368; herein 'LaVon'). Regarding claims 1-2 and 27 LaVon discloses a disposable absorbent article such as a diaper 20 (page 2, paragraph 0026) having belt zone 630 [belt zone is adjacent flap 620 in figure 7] comprising (a) a chassis having an absorbent core positioned between liquid pervious top sheet 22 and liquid impervious back sheet 24 (page 3, paragraph 0036, page 4, paragraph 0041, lines 2-4 and page 5, paragraph 0046, lines 1-2); (b) at least one sidewall disposed adjacent the chassis that connects front region 32 to back region 34 and thus forming leg openings and a waist edge (page 3, paragraph 0037, lines 1-5 and figure 1); said sidewall comprising an ear or panel (figures 1 and 3), and (c) wherein at least one handle is a flap 620 comprising a stratum/layered panel members (page 13, paragraph 0115, lines 14-21 and figure 8), wherein the flap forms a gap between the stratum and the chassis (figure 7), wherein the flap 620 is joined to the garment-facing

surface of the article 600 by opposing longitudinal welds/fasteners 625 (page 13, paragraph 0115, lines 20-21) and is disposed proximate opposing distal longitudinal edges of the flap (figure 7), wherein the handle is disposed adjacent the sidewall (figures 7-8) and wherein the absorbent diaper is a pull-on garment such as training pants (page 1, paragraph 0010, lines 1-5).

Regarding claim 3 LaVon discloses back sheet 24 is a non-woven material, thermoplastic film (page 5, paragraph 0046, lines 9-13).

Regarding claims 5-6 and 25-26 LaVon discloses the flap stratum is a portion of the belt zone that has been folded away from the wearer-facing surface of the article at hingepoints [hingepoint is disposed at a location where perimeter 710 meets adhesive/lateral weld 720] (page 14, paragraph 0123, lines 6-8 and figure 10) and wherein the flap comprises a multiple construction wherein the stratum is discrete (figure 10).

Regarding claims 23 and 28 LaVon discloses flap 620 has a lateral width greater than a longitudinal length and the handle laterally spans the width of the sidewall (figure 7).

Regarding claim 24 LaVon discloses blocking layers 670 forms cut through a portion of the stratum (figure 9 and page 13, paragraph 0117).

Regarding claims 29-30 LaVon discloses more than one ear connected to each other by welding means such as tab fasteners 640 (figure 8).

6. Claims 1, 6, 27, and 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshikazu (JP 11104180A2; herein 'Yoshikazu'). Yoshikazu discloses an

absorbent pants-type/pull-on diaper comprising a chassis, a sidewall disposed adjacent the chassis to form leg openings and a waist edge and at least one handle/flap comprising a stratum 15, wherein the flap 3a forms a finger-gripping gap between the discrete stratum 15 and the chassis, wherein the flap is joined to the garment-facing surface by adhesive welding means and wherein the handle is disposed adjacent to the sidewall, said sidewall comprises multiple ears 11 (see figures and entire abstract).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 21-22 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaVon et al. (US 2002/0091368; herein 'LaVon'). Lavon does not expressly disclose instructions. Since the instructions (printed matter) are not functionally related to the structure of the kit, the claimed invention does not patentably distinguish from the prior art reference(s). In order for the instructions (printed matter) to impart patentability to the kit, there must be a new and non-obvious functional relationship between the printed matter and some element of the kit. Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. *In re Ngai*, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004). See also MPEP 2121.01 (III).

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ashton et al. (US 6,443,940) is cited for showing a disposable absorbent training pants with tear open tabs 31 that the user can grip, said tabs having bonded portions/longitudinal welds 32 joined to the garment facing surface but without a gap between the stratum and chassis or sidewall and non-woven outer cover 74. Walker (US 6,475,204) is cited for showing diaper 10 with pouch/flap 16 joined to *body-facing* surface of the diaper, said flap forming a cavity/gap 28 between the flap stratum layer and the chassis 22 and having perforations/cut 20 through a portion of the stratum

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH

*LCH*

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

*Tatya*